

A BILL FOR AN ACT

RELATING TO NONCOMMERCIAL PIERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 171, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§171- Private residential noncommercial piers.

5 Notwithstanding any limitations to the contrary, the board of
6 land and natural resources may lease, by direct negotiation and
7 without recourse to public auction, state submerged lands or
8 lands beneath tidal waters for private residential noncommercial
9 piers on such terms and conditions as may be prescribed by the
10 board."

11 SECTION 2. Section 171-36, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) Except as otherwise provided[,] by law, the following
14 restrictions shall apply to all leases:

- 15 (1) Options for renewal of terms are prohibited;
- 16 (2) No lease shall be for a longer term than sixty-five
- 17 years, except in the case of a residential leasehold
- 18 which may provide for an initial term of fifty-five
- 19 years with the privilege of extension to meet the

1 requirements of the Federal Housing Administration,
2 Federal National Mortgage Association, Federal Land
3 Bank of Berkeley, Federal Intermediate Credit Bank of
4 Berkeley, Berkeley Bank for Cooperatives, or Veterans
5 Administration [requirements]; provided that the
6 aggregate of the initial term and extension shall in no
7 event exceed seventy-five years;

8 (3) No lease shall be made for any land under a lease which
9 has more than two years to run;

10 (4) No lease shall be made to any person who is in arrears
11 in the payment of taxes, rents, or other obligations
12 owing the State or any county;

13 (5) No lease shall be transferable or assignable, except by
14 devise, bequest, or intestate succession; provided that
15 with the approval of the board of land and natural
16 resources, the assignment and transfer of a lease or
17 unit thereof may be made in accordance with current
18 industry standards, as determined by the board;
19 provided further that prior to the approval of any
20 assignment of lease, the board shall have the right to
21 review and approve the consideration to be paid by the
22 assignee and may condition its consent to the
23 assignment of the lease on payment by the lessee of a

1 premium based on the amount by which the consideration
2 for the assignment, whether by cash, credit, or
3 otherwise, exceeds the depreciated cost of improvements
4 and trade fixtures being transferred to the assignee;
5 provided further that with respect to state
6 agricultural leases, in the event of foreclosure or
7 sale, the premium, if any, shall be assessed only after
8 the encumbrances of record and any other advances made
9 by the holder of a security interest are paid;

10 (6) The lessee shall not sublet the whole or any part of
11 the demised premises except with the approval of the
12 board; provided that prior to the approval, the board
13 shall have the right to review and approve the rent to
14 be charged to the sublessee; provided further that in
15 the case where the lessee is required to pay rent based
16 on a percentage of its gross receipts, the receipts of
17 the sublessee shall be included as part of the lessee's
18 gross receipts; provided further that the board shall
19 have the right to review and, if necessary, revise the
20 rent of the demised premises based upon the rental rate
21 charged to the sublessee including the percentage rent,
22 if applicable, and provided that the rent may not be
23 revised downward;

1 (7) The lease shall be for a specific use or uses and shall
2 not include waste lands, unless it is impractical to
3 provide otherwise; and

4 (8) Mineral and metallic rights and surface and ground
5 water shall be reserved to the State[; and

6 (9) No lease of public lands, including submerged lands,
7 nor any extension of any such lease, shall be issued by
8 the State to any person to construct, use, or maintain
9 a sunbathing or swimming pier or to use the lands for
10 such purposes, unless such lease, or any extension
11 thereof, contains provisions permitting the general
12 public to use the pier facilities on the public lands
13 and requiring that a sign or signs be placed on the
14 pier, clearly visible to the public, which indicates
15 the public's right to the use of the pier. The board,
16 at the earliest practicable date, and where legally
17 possible, shall cause all existing leases to be amended
18 to conform to this paragraph. The term "lease", for
19 the purposes of this paragraph, includes month-to-month
20 rental agreements and similar tenancies]."

21 SECTION 3. Section 171-53, Hawaii Revised Statutes, is
22 amended by amending subsection (c) to read as follows:

23 "(c) The board, with the prior approval of the governor and

1 the prior authorization of the legislature by concurrent
2 resolution, may lease state submerged lands and lands beneath
3 tidal waters under the terms, conditions, and restrictions
4 provided in this chapter; provided that the authorization of the
5 legislature shall not be required for leases issued under chapter
6 190D; and provided further that the approval of the governor and
7 authorization of the legislature shall not be required for any
8 grant of easement or lease of state submerged lands or lands
9 beneath tidal waters used for moorings, cables, [or]
10 pipelines[;], or noncommercial piers; provided further that this
11 exemption shall not apply to easements for cables used for
12 interisland electrical transmission or slurry pipelines used for
13 transportive materials, mined at sea, or waste products from the
14 processing of the same.

15 The lease shall provide that the lands shall be reclaimed at
16 the expense of the lessee. Title to the reclaimed lands shall
17 remain in the State."

18 SECTION 4. Statutory material to be repealed is bracketed.
19 New statutory material is underscored.

20 SECTION 5. This Act shall take effect upon its approval;
21 provided that the authority granted to the department of land and
22 natural resources to enter into lease agreements with owners of
23 private residential noncommercial piers shall be repealed on June

1 30, 2005, and the amendments made by sections 1, 2, and 3 of this
2 Act to the Hawaii Revised Statutes, shall be repealed as of that
3 date and sections 171-36(a) and 171-53(c), Hawaii Revised
4 Statutes, shall be reenacted in the form in which they read on
5 the day prior to the effective date of this Act; provided further
6 that any lease agreement executed pursuant to this Act prior to
7 June 30, 2005, or any lease extension executed thereon after the
8 repeal of this Act, shall remain exempt from section 171-
9 36(a)(9), Hawaii Revised Statutes, after the repeal of this Act.

APPROVED BY THE
GOVERNOR ON

JUN 20 2000